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SEIZURE AND FORFEITURE OF CULTURAL PROPERTY BY THE UNITED STATES

JAMES A.R. NAFZIGER*

INTRODUCTION

On July 5, 1996, a federal judge in New York ordered the expulsion from the United States of Artemis, the universal mother. She was, in effect, an undocumented alien. Surprisingly, the defendant, who had been up to her neck in theft, was only three and one-half feet tall and weighed about 400 pounds. Could this be the daughter of Zeus and sister of Apollo? Even more surprising to those who knew her, this mighty huntress and "rainer of arrows" maintained a stony silence throughout the proceedings. Perhaps such a confusing posture was to be expected from a goddess of both chastity and childbirth.

This Artemis was, in fact, a defendant *in rem*: a marble torso of the first century A.D. that had been stolen from a convent in Pozzuoli, near Naples. Her expulsion from this country was more accurately a forfeiture for her return to Italy, which was the first such order under the Convention on Cultural Property Implementation Act (Act)¹ in the Southern District of New York.² Given that New York is the world's capital of the art trade, that the Act is already thirteen years old, and that it implements an agreement to which the Senate gave its advice and consent by a vote of 79-0 twenty-five years ago, one can see that the law of cultural property is in no hurry.

Trafficking in illicit antiquities is, however, brisk. It is all too easy to smuggle cultural contraband into the United States. Hidden caches in cargo shipments, personal luggage and motor vehicles are not the only means. Blatant use of the mails, couriers and parcel services, as well as laundering of items through third countries, are also common practices. One successful smuggler, Val Ed-

* Thomas B. Stoel Professor of Law, Willamette University College of Law. The author presented these remarks at a symposium entitled *Reclamation of Cultural Property on the International Front: Is Home Where the Art Is?*, Villanova University School of Law, Feb. 22, 1997.

1. 19 U.S.C. §§ 2601-2613 (1994). For a further discussion of the Act, see *infra* notes 34-53 and accompanying text.

2. A summary of this case and the court's unpublished opinion appears in Anne C. Cockburn, *Stolen Torso Returned to Italy*, 17 IFAR REP., July-Aug. 1996, at 3.

wards, went public two years ago, bragging that he had had no problem hustling into this country some 1,000 museum-quality artworks from ancient burial sites in Mexico and Guatemala.³ Posing as a businessman buying restaurant equipment and cheap reproductions of antiquities for a Mexican restaurant, he had never been arrested in ten years of smuggling. Indeed, his bags had been searched only once and then for drugs rather than artwork. His tricks on the way through airport customs included the diversionary tactic of asking inspectors what he should do about an extra bottle or two of liquor he wanted to bring in. Most of the time, the inspectors would just waive him through: what an honest man, they must have thought!

II. STATUS OF CURRENT ENFORCEMENT

Unfortunately, but understandably, the United States Customs Service (Customs) is too hard pressed dealing with the drug trade and money laundering to devote adequate resources to combat illegal trafficking in antiquities. Never mind that it involves billions of dollars each year and ranks in profitability with illegally imported weapons and endangered species, though well behind drugs, as contraband. Sometimes drugs, money laundering, arms smuggling and trafficking in antiquities are closely related, as Operation Dinero, directed against the Locatelli organization and the Cali drug cartel, revealed.⁴

Customs plays a central role in the seizure or forfeiture of cultural property in this country, despite a pitifully small staff and the barest of training programs and directives.⁵ Unfortunately, the organization of the effort within the Treasury Department to combat illegal trafficking is also inadequate. For example, there is no sepa-

3. Edwards' story is recounted in William H. Honan, *Art For Whose Sake?: Trading in Antiquities; Rare Pre-Columbian Relics, at Any Cost*, N.Y. TIMES, July 31, 1995, at A1. Edwards said he decided to reveal his story after feeling cheated by his partners and repulsed by his life as an outlaw. *See id.*

4. *See* Anna J. Kisluk, *DEA Operation Nets 3 Pictures*, 16 IFAR REP., Dec. 1995, at 6. In December 1994, the Drug Enforcement Agency completed its investigation into the money laundering operations of the Cali, Colombia drug cartels. *See id.* The operation led to 88 arrests and the seizure of nine tons of cocaine and over \$650 million in cash and property. *See id.* The seized property included paintings by Pablo Picasso, Peter Paul Rubens and Sir Joshua Reynolds. *See id.*

5. *See* Detention and Seizure of Cultural Property, Customs Directive No. 5230-15, Apr. 18, 1991. It is uncertain whether the Treasury Department has updated this Directive. *See* Letter from Dennis M. O'Connell, Director of Tariff and Trade Affairs, United States Department of the Treasury, to James A.R. Nafziger, Professor, Willamette University College of Law (Feb. 14, 1997) (on file with author).

rate cultural property unit in Customs. Instead, the Intellectual Property Branch supervises controls over the importation of cultural property.⁶ The Intellectual Property Branch works with the Office of Trade Operations within the Treasury Department's Office of Field Operations. The latter agency is responsible for advising Customs ports and district offices on the classification of particular artifacts as restricted merchandise. A few experts at principal ports, especially New York, are well trained to identify suspicious merchandise on arrival, but most inspectors lack both the education in cultural property and confidence to enforce such law.⁷ The Treasury Enforcement Computer System (TECS) provides a certain amount of information that inspectors can access at Customs posts, but its database, updated by an electronic bulletin board, is by no means definitive.⁸ On the whole, neither inspectors nor officials seem to have an understanding of the sources of expertise and the various databases that are available outside the government. To give inspectors greater awareness and knowledge of questionable cultural material, the Treasury Department has proposed to develop electronic style guides and computer modules developed by owners of intellectual property rights. Unfortunately, this effort is limited by a lack of resources.⁹

6. See Dennis M. O'Connell, Remarks Before the Cultural Property Advisory Committee, at 3 (Sept. 13, 1995) (on file with author) [hereinafter Remarks].

7. See Dennis M. O'Connell, Remarks Before the Cultural Property Advisory Committee, at 2 (Sept. 14, 1995) (on file with author).

8. See *id.* O'Connell also noted that the traveler must arouse suspicion before inspectors can query TECS. See *id.*

9. See Remarks, *supra* note 6, at 4. Mr. O'Connell has carefully identified a number of problems in developing a more sophisticated electronic data base for use by busy inspectors, as follows:

It is of no value simply to type or record all the information into the computer under individual names of objects, that is unless we were watching for one of a small number of famous works like "The Scream". There has to be a format and some generic references that will bring up the relevant images based on the inspector's description of what he has in front of him. . . . To create a user friendly interface probably would involve a somewhat challenging synthesis of two types of expertise. First, one would need an expert on the types of artifacts in question. Second, and perhaps more important from an effectiveness standpoint, one would need a software expert who could translate the sophistication of the art historian into a language that would be comprehensible to an inspector. . . . [M]any of the terms that are familiar to art historians or museum curators, such as "celts," "metates" or "polychrome" would be Greek to a G.S.9 inspector working the belt where accompanied baggage is being processed. To give just one example, the software would have to be programmed so that, if the inspector entered "frog statue," he would bring up on the computer screen a photograph of the El Salvadoran toad effigy that is a protected artifact. I think it is obvious that this would take some considerable amount of time, effort and imagination and that the

Customs does receive some support from other agencies. The Federal Bureau of Investigation, Drug Enforcement Administration and other federal law enforcement agencies all cooperate with Customs in interdicting cultural contraband. The State Department, through its consulates and embassies abroad, also assists by providing information about questionable items and activity.

III. BASES FOR DETENTION OR SEIZURE OF CULTURAL PROPERTY

Federal authorities in the United States may detain or seize cultural property on any of five legal bases:¹⁰

1. Customs agents, acting under general powers, may seize any item that is smuggled, improperly declared or undervalued upon its entry into the country.¹¹ Val Edwards, the liquor-toting smuggler, for example, was finally nabbed for making a false declaration as he proceeded through customs. False declarations, invoicing or evaluations can also constitute the federal offense of commercial fraud. In the absence of a seizure or investigation, Customs has no power to detain property once it has received and processed entry documents, classified and valued the property, and assessed a duty.¹² Otherwise, the powers of Customs to seize and detain restricted merchandise are broad, extending even to bona fide purchases.

After Customs has seized and detained cultural property, its Office of Enforcement (Office) normally undertakes an investigation. If the Office can determine the country of origin, it will notify that country's embassy. If necessary, enforcement proceedings may include a criminal action, forfeiture proceedings or an interpleader action on the status of the contested property. On completion of

task will enlarge considerably as more agreements and restrictions go into effect.

Id. at 6-7.

10. State criminal laws also provide, of course, for seizure of stolen and illegally excavated cultural property. Typically, the state role is confined to strictly local trafficking. For a discussion of federal preemption of state laws, see John Henry Merryman & James A.R. Nafziger, *The Private International Law of Cultural Property in the United States*, 42 AM. J. COMP. L. 221, 222-23 (1994).

11. See 18 U.S.C. § 545 (1994) (discussing smuggling goods into United States); 19 U.S.C. § 1497 (1994) (discussing penalties for failure to declare); 19 U.S.C. § 1595 (1994) (discussing searches and seizures of merchandise on cause to suspect failure to pay duties on it or if it "has been otherwise brought into the United States contrary to law").

12. See *Azurin v. Von Raab*, No. CIV.A.86-50189, 1986 WL 10700 (D. Haw. June 6, 1986) (holding that Customs could not detain property when "all entry requirements have been discharged"), *rev'd on other grounds*, 803 F.2d 993 (9th Cir. 1986).

any such action, an illegally imported object may then be returned, if requested, to the country of origin.

An interesting case arose in 1994 when a New York art dealer consigned three works of Pre-Columbian art to Sotheby's for inclusion in an auction.¹³ On the basis of information in the catalogue for the auction, Customs seized the artifacts, claiming that they had been either imported in violation of the Convention on Cultural Property Implementation Act or smuggled into this country. While a grand jury was convening in the matter but prior to any indictment, the dealer moved under Rule 41(e) of the Federal Rules of Criminal Procedure¹⁴ to recover his property on the ground that it had been illegally seized. The court, however, denied the motion for failure to make the showing of requisite harm. Although the government conceded that the artifacts did not fall within the protection of the Act, the allegation of smuggling was sufficient to justify detention of the property by Customs.

2. The National Stolen Property Act (NSPA)¹⁵ prohibits the transportation in interstate or foreign commerce of any article with a value of \$5,000 or more, which is known to be stolen.¹⁶ Occasionally, INTERPOL and foreign governments initiate requests for detention or seizure of objects. With or without such a request, federal law-enforcement agencies may seize objects under 18 U.S.C. § 545, however, the NSPA does not itself authorize seizure or detention of objects. The NSPA does provide a basis for prosecution and

13. See *In re Search Warrant Executed February 1, 1995*, No. M 18-65 (RJW), 1995 WL 406276 (S.D.N.Y. July 7, 1995).

14. Federal Rule of Criminal Procedure 41(e) states:

A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for a hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

FED. R. CRIM. P. 41(e).

15. 18 U.S.C. §§ 2311-2319 (1994).

16. *Id.* § 2314. This section states in pertinent part:

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted, or taken by fraud, shall be fined under this title or imprisoned not more than ten years, or both.

Id.

return of illegally imported objects to countries of origin. Ordinarily, the return of such objects is coordinated with foreign embassies.

In 1996, a federal grand jury in Columbus, Ohio indicted a retired art history professor on four counts of possessing and transporting several leaves from a rare manuscript in the Vatican that had once belonged to the 14th century humanist, Petrarch.¹⁷ As usual in a federal case, Customs had been deeply involved in investigating and seizing the material even though it had reposed in the clutches of the more-than-merely-absent-minded professor for a substantial period of time after the manuscript leaves had been smuggled into this country.

The famous cases of *United States v. Hollinshead*¹⁸ and *United States v. McClain*¹⁹ established that the term "stolen property" in the NSPA may be defined by the law of the country of origin. Even if a foreign state has not reduced an illegally exported object to its possession, it may validly claim ownership over the property *so long as* it has previously declared so by law.²⁰ In these circumstances, the item constitutes "stolen property" under the NSPA. *United States v. Pre-Columbian Artifacts*²¹ recently extended this "prior declaration rule" to include objects over which a country, namely Guatemala, had claimed ownership effective only as of the time of their illegal export, that is, only upon their *departure* from the country. The court held that "while traveling in foreign commerce, the articles were stolen [under the NSPA definitions] in that they belonged to the Republic, not the person who unlawfully possessed the artifacts."²² It is important to note that the court was enforcing foreign antiquity legislation, not an export law. Even so, this decision comes close to ignoring the old taboo against even selectively enforcing foreign export laws.

17. See *Indictment in Case of Leaves from Petrarch's Manuscript in the Vatican*, 17 IFAR REP., Jan.-Feb. 1996, at 5.

18. 495 F.2d 1154 (9th Cir. 1974).

19. 593 F.2d 658 (5th Cir. 1979).

20. See *Republic of Turkey v. OKS Partners*, 797 F. Supp. 64 (D. Mass. 1992) (allowing Turkey to assert causes of action over coin collection allegedly smuggled out of country); *McClain*, 593 F.2d at 664 (confirming that definition of stolen property under NSPA may rely on foreign patrimonial legislation). But See *Government of Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989), *aff'd sub nom.*, *Government of Peru v. Wendt*, 933 F.2d 1013 (9th Cir. 1991) (establishing that unless a state had effectively declared ownership, it could not claim that an illegally exported object had been "stolen" under NSPA).

21. 845 F. Supp. 544 (N.D. Ill. 1993).

22. *Id.* at 547.

3. The Pre-Columbian Monumental and Architectural Sculpture and Mural Statute (Pre-Columbian Statute)²³ prohibits the import of any designated pre-Columbian stone carvings or wall art into the United States unless they are accompanied by sufficient documentation showing that their export either complied with the laws of the country of origin or occurred before 1972, when the Pre-Columbian Statute came into force.²⁴ The Secretary of the Treasury has the responsibility of preparing the list of designated protected items after consulting with the Secretary of State.²⁵ Upon detention of listed objects by Customs, articles are stored at a storage facility or bonded warehouse at the risk of a consignee until sufficient documentation is presented.²⁶ If no certification of legitimate export is presented within ninety days, the item is to be seized, forfeited and returned to the country of origin, so long as that country agrees to bear all expenses incident to the return.²⁷ A bona fide owner or other successful claimant receives no compensation under this legislation.²⁸

4. Bilateral treaties with Ecuador, Guatemala, Mexico and Peru provide for mutual cooperation, with various arrangements for detention and seizure, to recover and return stolen cultural property to the country of origin.²⁹ An official request from one country automatically triggers enforcement procedures in the requested country. Judicial proceedings, such as in the treaty with Mexico, are among several avenues of implementation provided by the treaties.

More recent agreements with the former Czechoslovakia, Romania and the Ukraine provide for cooperation in the protec-

23. Act on the Regulation of Importation of Pre-Colombian Monumental or Architectural Sculpture or Murals, 19 U.S.C. §§ 2091-2095 (1994). For a summary, see KIFLE JOTE, INTERNATIONAL LEGAL PROTECTION OF CULTURAL HERITAGE 162-65 (1994).

24. 19 U.S.C. §§ 2091-2095.

25. *See id.* § 2091.

26. *See id.* § 2092.

27. *See id.* §§ 2092-2093.

28. *See id.* § 2093.

29. *See* Agreement for the Recovery and Return of Stolen Archaeological, Historical and Cultural Property, Jan. 14, 1987, U.S.-Ecuador, T.I.A.S. No. 11075; Agreement for the Recovery and Return of Stolen Archaeological, Historical and Cultural Property, May 21, 1984, U.S.-Guat., T.I.A.S. No. 11077; Treaty of Cooperation Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, July 17, 1970, U.S.-Mex., 22 U.S.T. 494; Agreement for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, Sept. 15, 1981, U.S.-Peru, 33 U.S.T. 1608.

tion of certain Jewish-owned property in those countries.³⁰ A treaty with Greece³¹ provides, in part, for cooperation between Customs of both countries to combat illicit trafficking of artifacts. Forfeiture is one type of mutual assistance. A few years ago, the government of Greece brought a claim in federal court for the return of a collection of rare Mycenaean gold jewelry and ornaments in the possession of a New York art dealer.³² In 1996, the dealer agreed to donate the collection to a foundation for eventual return to the government of Greece. This marked the first repatriation of significant cultural objects from the United States to Greece.³³

5. Finally, the Cultural Property Implementation Act³⁴ executes the United States' obligations under the UNESCO Convention (Convention) on illicit trafficking of cultural property.³⁵ Unlike other parties, the United States entered a reservation to the Convention through which it refused to enforce export controls of foreign countries solely on the basis of illicit trafficking of cultural property.³⁶ Instead, under another provision of the Convention,³⁷ the United States has agreed that other parties to the Convention can call upon this country to exclude items from a specific cultural element in their national patrimony if that element is in jeopardy.³⁸ As a rule, the United States will take such action only if similar action is taken by other states with a significant impact on trade in the particular material to be protected. The Act also provides for the

30. See Agreement for the Protection and Preservation of Cultural Properties, Mar. 17, 1992, U.S.-Czech. Rep., Hein's No. KAV 3167, State Dep't No. 92-63; Agreement for the Protection and Preservation of Certain Cultural Properties, July 29, 1993, U.S.-Rom., Hein's No. KAV 3641, State Dep't No. 93-156; Agreement for the Protection and Preservation of Cultural Heritage, Mar. 4, 1994, U.S.-Ukr., Hein's No. KAV 3795, State Dep't No. 94-81.

31. See Agreement Regarding Mutual Administrative Assistance Between Their Customs Administrations, Jan. 17, 1993, U.S.-Greece, Hein's No. KAV 3085, State Dep't No. 93-33.

32. See Irvin Molotsky, *20 Years After Thievery, Rare Gold Ornaments Will Return to Greece*, N.Y. TIMES, Jan. 31, 1996, at C16.

33. See *id.* The art dealer, Michael Ward, was a member of the Cultural Property Advisory Committee of the United States Information Agency (USIA) when the incident first came to light. See *id.* He was, therefore, a kind of fox in the chicken coop of the federal government's principal agency to protect threatened cultural property.

34. 19 U.S.C. §§ 2601-2613 (1994).

35. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, *adopted* Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter Convention].

36. See S. REP. NO. 97-564, at 21 (1982), *reprinted in* 1982 U.S.C.C.A.N. 4098, 4098-4106 (implementing part of 1970 UNESCO Convention).

37. See Convention, *supra* note 35, art. 9.

38. See *id.*

United States' cooperation in returning property stolen from a museum, religious or secular public monument or similar institution in a requesting state.³⁹ The stolen torso of Artemis is a classic example of this provision in action.

This mechanism does not justify seizure of property merely on the basis that it appears to meet the general definition of "cultural property" common to the Convention and the Act. Rather, an item may be seized under the Act only if it has been specifically identified in the Federal Register or if it is already inventoried property stolen from a museum, religious or secular public monument, or similar institution in a requesting party to the agreement.⁴⁰ In order for specific cultural property to be listed in the Federal Register, the President must either order emergency import restrictions to protect the property or enter into a bilateral agreement with the requesting country to the same effect.⁴¹ The President does so only on the request of a foreign country and with the advice of a Cultural Property Advisory Committee that has been established for this purpose within the United States Information Agency.⁴²

To date, emergency restrictions have been imposed unilaterally under the Act on artifacts from the Cara Sucia Region of El Salvador; ceremonial textiles and other ethnological materials from Coroma, Bolivia; culturally significant archaeological objects from the Sipán Region of Peru; Mayan artifacts from the Petén Region of Guatemala; and ethnographic and archaeological material from Mali.⁴³ The United States has also entered into three bilateral agreements to protect cultural heritage. The first agreement was in 1995 with El Salvador,⁴⁴ in order to continue the protection of Cara Sucia artifacts after emergency measures under the Act had ex-

39. See 19 U.S.C. § 2607 (1994).

40. See *id.* Article 7(b)(i) of the UNESCO Convention provides, in pertinent part, that the parties to the Convention undertake to prohibit the import of stolen cultural property "provided that such property is documented as appertaining to the inventory of that institution." Convention, *supra* note 35, at 231.

41. See 19 U.S.C. § 2607.

42. See *id.* § 2603.

43. See CULTURAL PROPERTY ADVISORY COMM., LOOTING, THEFT AND SMUGGLING: A REPORT TO THE PRESIDENT AND THE CONGRESS 1983-1993, at 11, 14-22 (1993) [hereinafter CPAC Report]. For a symposium on the Malian heritage, see Symposium, *Protecting Mali's Cultural Heritage*, AFR. ARTS, Autumn 1995. See also Maria Papageorge Koroupas, *U.S. Efforts to Protect Cultural Property: Implementation of the 1970 UNESCO Convention*, AFR. ARTS, Autumn, 1995, at 32 (reproducing restrictions on imports from Mali and summarizing history and work of Cultural Property Advisory Committee and associated efforts).

44. See 1995 Import Restrictions on Prehispanic Artifacts from El Salvador, 60 Fed. Reg. 13,352 (1995).

pired. In 1997, the United States and Canada entered into an agreement to mutually restrict the import of a broad range of archaeological and ethnographic material, as well as material from shipwrecks and other underwater historic sites that are at least 250 years old.⁴⁵ The two neighbors also agreed to promote exchange of material for educational and scientific purposes.⁴⁶ These bilateral measures culminate an effort that began in 1985 with Canada's request for protection.⁴⁷ The third agreement, also in 1997, broadens the protection of Peruvian material to include Chavin, Paracas, Moche, Cuzco, Inca and other material from 12,000 B.C. to 1532 A.D., as well as specific ethnological material from the Colonial period (1532-1821), including paintings and sculptures used for evangelism among indigenous people.⁴⁸

To come back to the theme of my remarks, any designated or stolen property under the Cultural Property Implementation Act is subject to seizure and forfeiture.⁴⁹ Under the Act, Customs has extensive seizure authority pursuant to a warrant from a magistrate or judge. The possessor of any seized article has an opportunity to be heard. If the possessor loses, the government first offers a forfeited article to the country of origin if that country agrees to bear all expenses incident to its return, including compensation to any claimant who can demonstrate that he or she is a bona fide purchaser.⁵⁰ Otherwise, the item may be returned to the claimant on proof of valid title and status as a bona fide purchaser for value.⁵¹

The Act excludes from seizure and return all material that has been held for periods of at least three to twenty years and, depending on the precise threshold period, has been displayed, reported in an appropriate publication, or cataloged for public scrutiny.⁵²

45. See United States Information Agency, News Release No. 031-97, Apr. 10, 1997, at 1-2.

46. See *id.* at 2.

47. See CPAC Report, *supra* note 43, at 11, 22.

48. See United States Information Agency, News Release No. 048-97, June 9, 1997, at 1.

49. See 19 U.S.C. §§ 2601-2613 (1994).

50. See *id.* § 2609.

51. See *id.*

52. See *id.* § 2611. This section provides:

The provisions of this chapter shall not apply to—

(1) any archaeological or ethnological material or any article of cultural property which is imported into the United States for temporary exhibition or display if such material or article is immune from seizure under judicial process pursuant to section 2459 of Title 22; or
(2) any designated archaeological or ethnological material or any article of cultural property imported into the United States if such material or article—

Another statute, which is cross-referenced in the Act, holds immune from seizure any cultural property imported into the United States for temporary exhibition or display and designated by the President for such immunity.⁵³

IV. CONCLUSION

The first major seizure and return under the emergency measures occurred on May 20, 1996. On that day, special agents from Customs in New York effected the return of several Sipán gold pieces to Peru.⁵⁴ It is difficult to say why such seizures and returns have been so rare. Perhaps the *in terrorem* effect of the law has deterred illegal trafficking substantially, but probably not. Illegal traf-

(A) has been held in the United States for a period of not less than three consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of this chapter, but only if—

(i) the acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least fifty thousand, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from this chapter,

(ii) such material or article has been exhibited to the public for a period or periods aggregating at least one year during such three-year period, or

(iii) such article or material has been cataloged and the catalog material made available upon request to the public for at least two years during such three-year period;

(B) if subparagraph (A) does not apply, has been within the United States for a period of not less than ten consecutive years and has been exhibited for not less than five years during such period in a recognized museum or religious or secular monument or similar institution in the United States open to the public; or

(C) if subparagraphs (A) and (B) do not apply, has been within the United States for a period of not less than ten consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary shall by regulation prescribe) of its location within the United States; and

(D) if none of the preceding subparagraphs apply, has been within the United States for a period of not less than twenty consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

Id.

53. See 22 U.S.C. § 2459 (1994).

54. See Anne C. Cockburn, *Peruvian Antiquities Seized as Sipán Artifacts*, 17 IFAR REP., July-Aug. 1996, at 4.

ficking in cultural property is rampant and the legal regime is still weak. The trend, however, is somewhat encouraging, as courts and government agencies gradually learn to apply the law more effectively. The hunt for cultural contraband is becoming better organized. It is enough for Artemis to think about breaking her stony silence by shooting off a few of her arrows.